

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 21, 2005

TO: Persons on the attached mailing list.

RE: Texas Organic Recovery Compost Facility  
Permit No. 2320

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Mustang Ridge City Hall, 12800 US Highway 183 South, Buda, Texas 78610.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

### **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

  
LaDonna Castañuela  
Chief Clerk

LDC/cz

Enclosures

MAILING LIST  
for  
Texas Organic Recovery Compost Facility  
Permit No. 2320

FOR THE APPLICANT:

Roy Eugene Donaldson, II  
Texas Organic Recovery Compost Facility  
15500 Goforth Road  
Creedmoor, Texas 78610

Kenneht Stecher, P.E.  
Thonhoff Consulting Engineers, Inc.  
Suite A-236  
1301 Capitol of Texas Highway South  
Austin, Texas 78746

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

Lesley Nicholes, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Mario Perez, Sr., Technical Staff  
Texas Commission on Environmental Quality  
Waste Permits Division  
MSW Permits Section MC-124  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Jodena Henneke, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
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7700 NOLAN BLUFF RD  
BELTON TX 76513-7044

JULIE MOORE  
502 SPILLER LN  
AUSTIN TX 78746-4439

JULIE W MOORE  
604 W 14TH ST  
AUSTIN TX 78701-1726

ALTON PHILLIPS  
1768 ROGERS RANCH RD  
LOCKHART TX 78644-4436

JULI PHILLIPS  
7800 WILLIAMSON RD  
KYLE TX 78640-3961

EDDIE RODRIGUEZ STATE REPRESENTATIVE  
TEXAS HOUSE OF REPRESENTATIVES  
PO BOX 2910  
AUSTIN TX 78768-2910

ROBIN SCHNEIDER EXECUTIVE DIRECTOR  
TEXAS CAMPAIGN FOR THE ENVIRONMENT  
STE 200  
611 S CONGRESS AVE  
AUSTIN TX 78704-8706

**Proposed New TCEQ MSW Permit No. 2320**

Application by  
**Texas Organic Recovery**  
for TCEQ MSW Permit No. 2320

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Before the  
**Texas Commission on  
Environmental Quality**

CHIEF CLERKS OFFICE

2005 JUL 19 PM 3:59

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

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The Executive Director of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Public Comment on Texas Organic Recovery's application for Municipal Solid Waste (MSW) Permit No. 2320 for the operation of a Type V-RC composting facility and the Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code (TAC), section 55.156, before an application is approved and a permit is issued, the Executive Director (ED) prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comments from:

Lee Mackenzie  
Ann Messer  
Julie Moore  
Alton Phillips  
Juli Phillips  
Eddie Rodriguez, State Representative, District 51  
Robin Schneider, Texas Campaign for the Environment  
M.D. Thompson, Represented by Leon J. Barish  
H. Phillip Whitworth

This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

Texas Organic Recovery has applied to the TCEQ for a Type V-RC MSW permit to authorize a resource recovery and composting facility for the composting of municipal sewage sludge, septage, grease trap waste, and positively sorted organic material limited to paper, cardboard, wood, and vegetative food matter. The facility currently operates under MSW Registration No.47006.

The facility is located at 15500 Goforth Road, Creedmore, Texas, Travis County, approximately 2000 feet south of the intersection of County Road 177 and Goforth Road in southeast Travis County. This location is in the extraterritorial jurisdiction of Travis County and is not subject to any zoning. The predominant land use in the vicinity is agricultural. There are approximately 45 residences and no business establishments within a mile of the facility. The total permitted facility boundary is approximately 15.23 acres within a 200 acre tract of land. The proposed facility will consist of a site entrance with barb-wire fencing, all-weather interior access road, contaminated water storage pond, groundwater monitoring system, composting pad, curing pad, liquid feedstock unloading area, bulking material storage area, tipping area, de-watering area, and liquid feedstock storage tanks. The facility will be open 12 hours per day, 5 days per week and 5 hours on Saturday. The facility gate will normally be open from 5:00 am to 5:00 pm, Monday through Friday, 9:00 am to 2:00 pm on Saturday, and closed on Sunday.

### Procedural Background

The application under review is for a new permit for composting activities that are currently being conducted at this site under an approved TCEQ registration. The new permit application was submitted in response to new legislation and new TCEQ rules adopted on December 17, 2003 that require existing registered facility to obtain a permit.<sup>1</sup> The facility was required to submit a permit application within 30 days of receiving notification from TCEQ.<sup>2</sup> Texas Organic Recovery Composting's application was received on January 26, 2004 and declared administratively complete on April 15, 2004. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit was published on April 22, 2004 and the Notice of Application and Preliminary Decision was published on December 6, 2004 in the *Austin-American Statesman*. The comment period ended at the conclusion of the public meeting held on April 19, 2005. Because this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999.

### Access to Rules, Laws, and Records

The Commission's rules may be accessed on-line using the Texas Administrative Code (TAC) viewer feature at the Texas Secretary of State website: <http://www.sos.state.tx.us>. The Health and Safety Code and the Water Code of the State of Texas may be accessed at the Texas Legislature on-line website at: <http://www.capitol.state.tx.us/statutes/statutes.html>. Other useful information is available at TCEQ's website: <http://www.tceq.state.tx.us>. The federal code, statutes, and regulations may be accessed through the Environmental Protection Agency (EPA) website at: <http://www.epa.gov/epahome/lawregs.htm>.

Commission records for the facility are available for viewing and copying at TCEQ's main office in Austin Park 35 Circle, Building E, Room 103 and TCEQ's Region 11 Office in Austin. If you would like to file a complaint, you may contact the Commission at 1-888-777-3186 or TCEQ Region

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<sup>1</sup> 5 Tex. Health & Safety Code Ann. § 361.428 (d) (2003).

<sup>2</sup> 30 TAC § 332.3 (a)(3)(B)(2004).

11 Office at 1921 Cedar Bend Dr., Suite 150, Austin, Texas at 512-339-2929. If the facility is found to be out of compliance, it may be subject to enforcement action.

## **COMMENTS and RESPONSES**

### **COMMENT 1** (Applicant's Previous Representations to the Community)

Ann Messer and M.D. Thomson commented that during the registration process the Applicant represented to the community that the location would be temporary.

### **RESPONSE 1**

The current permit application is distinct and separate from the previously issued registration. A permit application does not require the applicant to submit information regarding plans, past or present, to operate on a temporary basis. The applicable TCEQ rules do not require the applicant to provide information regarding the length of time the applicant anticipates operating the facility. This permit will be issued for the operating life of the facility.

### **COMMENT 2** (Property Value)

Juli Phillips, M.D. Thomson, and H. Phillip Whitworth are concerned about the affect the facility has on the value of the surrounding private property.

### **RESPONSE 2**

A permit application is reviewed for compliance with all applicable regulations under state law and TCEQ rules. The rules and regulations do not authorize the ED to consider property values when reviewing an application. However, the issuance of a permit does not authorize injury to persons or property, invasion of other property rights, or any infringement of state or local law or regulation.<sup>3</sup>

### **COMMENT 3** (Odor)

Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth commented that the facility currently emits bad odors in violation of 30 TAC, section 332.45(5) and that the odor interferes with property owners' quality of life and ability to use and enjoy their property. Additionally, they are concerned that the violations may continue after the facility is permitted.

### **RESPONSE 3**

Grease trap waste composting operations are required to comply with rules that have been implemented to minimize offensive odors and air pollution; and prevent the creation of nuisance conditions that have the potential to create or contribute to conditions adverse to human health, safety, or welfare.<sup>4</sup> The applicable rules include:

- locating areas that receive, process, or store feedstock and final

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<sup>3</sup>30 TAC § 305.122 (c) (2004)

<sup>4</sup>30 TAC §§ 332.4 (2); 332.45 (5) (2004).



product at least 50 feet from the facility's boundary;<sup>5</sup>

- employing dust control on all interior roads;
- accepting high odor feedstock only when an appropriate amount of adequate bulking material is on-site;
- grinding and storing bulking material in a manner that minimizes loss into the atmosphere;
- turning piles in an appropriate manner to eliminate odor; and
- processing feedstock in a manner to eliminate the creation of a nuisance condition.<sup>6</sup>

The Applicant is required to submit a Site Operating Plan (SOP) that describes the facility's planned operating procedures. The submitted SOP, sections Q-R(1-6), adequately addresses procedures regarding the minimization of odors. Additionally, if objectionable odors occur, the owner or operator must initiate appropriate measures to alleviate the condition. The ED found that the application demonstrated a plan capable of complying with rules aimed at minimizing odors and air pollution.

However, if the Applicant poses a threat to public health, safety, or the environment, please report an environmental complaint, including airborne emissions and nuisance conditions. In response to a complaint a regional investigator will investigate the alleged nuisance conditions at the facility. If the regional investigator documents a violation of the TCEQ regulations, then appropriate action will be taken which may include enforcement action.

**Violations can be reported by contacting the Environmental  
Violations Hot Line toll free, 1-888-777-3186 or by contacting  
TCEQ Region 11, Austin Office, at 512-339-3795.**

**COMMENT 4** (Ground Water)

Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth are concerned that the facility is in violation of 30 TAC, section 332.45(2), enacted to protect groundwater. Julie Moore asked if the applicant tested the newly installed groundwater wells in the Spring of 2005?

**RESPONSE 4**

The facility is currently operating under a registration and is not required to sample ground water. Once the permit is issued the Applicant is required to conduct background groundwater sampling quarterly by collecting four groundwater samples from each monitoring well within 24 months.

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<sup>5</sup>30 TAC § 332.44 (6) (2004).

<sup>6</sup>30 TAC § 332.8 (e) (2004).

After background sampling is completed, groundwater sampling will be on an annual basis. The facility will include a groundwater monitoring system based on site-specific technical information consisting of a sufficient number of wells installed at appropriate locations and depths to yield representative groundwater samples from the uppermost aquifer. The groundwater monitoring wells will be sampled and analyzed in accordance with the SOP. The ED has determined that the proposed groundwater monitoring system meets the minimum requirements set forth in the rules and, if the permit provisions are complied with, will provide adequate groundwater monitoring.

**COMMENT 5** (Surface Water)

Ann Messer, Julie Moore, Alton Phillips, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth are concerned that the facility is in violation of 30 TAC, section 332.45(1), enacted to protect surface water. There was special concern expressed about the pollution of Williamson Creek. Julie Moore commented that the water in Williamson Creek should be tested. Ann Messer and Alton Phillips commented that the detention pond is inadequate to prevent surface water runoff in a 100-year flood event and that the facility has not prevented runoff into Cowpen Creek and other properties during storm events in the last few years.

**RESPONSE 5**

The Applicant has demonstrated compliance with the minimum requirements that include a design capable of managing run-on and run-off during a 25 year, 24-hour rainfall event such that it prevents the water from contacting the feedstock in any part of the composting process.<sup>7</sup> Additionally, the Applicant has demonstrated that leachate will be contained in a lined retention facility for storage until proper use or disposal.<sup>8</sup> Upon review of the application, the above concerns have been addressed by requiring the berm to be extended so it is contiguous along the entire facility boundary which includes the storm water holding pond area. The slopes of the sides and toe shall be graded and maintained in such a manner so as to minimize the potential for erosion. The berm shall contain all of the drainage within the facility boundary during a 100-year flood event and still will have a free board of three feet. The ED has determined that with the additional requirements the application complies with TCEQ rules and should protect surface water.

**COMMENT 6** (FEMA Maps)

Robin Schneider is concerned that the Federal Emergency Management Agency (FEMA) map used to identify the 100-year flood plain are out-of-date and inadequate to prevent surface water contamination.

**RESPONSE 6**

The TCEQ rules do not specify the preparation date for the FEMA map used during the review process. The application must be reviewed using a map that provides the location and lateral extent of all flood plains and wetlands on the site and within 500 feet of the site.<sup>9</sup> This application was

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<sup>7</sup> 30 TAC 332.45(1) (2004).

<sup>8</sup> 30 TAC 332.45(1) (2004).

<sup>9</sup> 30 TAC § 332.47(6)(A)(v)(VI)(2004).

reviewed using FEMA map No. 48453C0185E dated June 16, 1993 which complies with TCEQ rules.

**COMMENT 7 (Accepted Waste Stream)**

Juli Phillips and M.D. Thomson are concerned that the facility is not in compliance with 30 TAC, section 332.45 (10), enacted to prevent unauthorized and prohibited materials from being applied to or incorporated into feedstock, in-process material, or processed material. Ann Messer, Julie Moore, and H. Phillip Whitworth are concerned about the pesticides and other chemicals contained in the material being composted.

**RESPONSE 7**

TCEQ rules have been adopted to prevent unauthorized or prohibited materials from entering the facility. The rules require the entire facility to be fenced; maintenance of a gate at the entrance that is locked outside normal operating hours; and at least one employee on-site to inspect deliveries during operating hours. Additionally, the rules prohibit certain materials from being applied to or incorporated into the feedstock during the composting process.<sup>10</sup> The ED has determined that the submitted application complies with TCEQ rules. To the extent that unauthorized and prohibited material are accepted or prohibited material is incorporated into the feedstock, such activities would be in violation of the proposed permit and enforcement action may ensue.

The substances being approved for composting in this permit have been authorized under Title 30 TAC, Chapter 332, and there has been no data that suggests the substances being composted pose a threat to the environment when properly handled in accordance with TCEQ rules. The terms and conditions contained in the draft permit protect human health and safety and the environment.

**COMMENT 8 (End-Product)**

Julie Moore, Juli Phillips, and M.D. Thomson are concerned that the facility does not comply with 30 TAC, section 332.45 (11), which requires compliance with end-product testing and standards. Lee Mackenzie commented that he is a gardener, he uses the facility's end-product and he thinks it is great.

**RESPONSE 8**

The end product produced by composting operations is required to undergo testing and sampling to determine a final product grade before it is sold and distributed.<sup>11</sup> The material is tested for composition of foreign matter, mineral and metal concentrations, salinity, pH, and pathogens. The procedures to obtain representative samples of the finished product include sampling of every 3000 cubic yards produced from a minimum of five locations using specified equipment and analysis process. Upon review the ED determined that the sampling, analysis, and testing procedures set forth in Appendix M of the application complies with TCEQ rules.

**COMMENT 9 (Fire)**

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<sup>10</sup>30 TAC § 332.45 (10)(2004).

<sup>11</sup>30 TAC § 332.45 (11)(2004).

Juli Phillips commented that the facility recently had a fire and that she is concerned about its impact on the facility and environment.

**RESPONSE 9**

The facility is required to comply with provisions of the local fire code, provide fire-fighting equipment, and provide fire fighting training for site employees.<sup>12</sup> The application demonstrates compliance with rule requirements and the Applicant has stated that he will work with the local fire department, if necessary, to develop additional operational plans.

**COMMENT 10 (Operations)**

Julie Moore and Juli Phillips are concerned that the facility is not being properly operated. H. Phillip Whitworth commented that the facility is operated in an environmentally reckless manner.

**RESPONSE 10**

Texas Organic Recovery Facility's compliance history under MSW Registration No. 47006 does not include any investigations, notices of violation, or enforcement actions. Additionally, the ED has not received any information that indicates the facility is currently polluting or operating in an environmentally reckless manner.

**Violations can be reported by contacting the Environmental  
Violations Hot Line toll free, 1-888-777-3186 or by contacting  
TCEQ Region 11, Austin Office, at 512-339-3795.**

**COMMENT 12 (Traffic)**

Ann Messer and Juli Phillips commented that the facility brings a lot more traffic, especially big trucks, and wants to know if anything is going to be done about the impact of additional traffic in the area.

**RESPONSE 12**

The Applicant has indicated that when the facility is operating it will impact traffic by an additional 10 vehicles per day. The information provided by the Applicant indicates that both access roads, Goforth Road and Williamson Road, have a carrying capacity of 80,000 pounds and traffic volumes of 10 and 260 vehicles per day, respectively. The Texas Department of Transportation did not provide any comment after it was provided with notice of the application and an opportunity to comment.

**CHANGES MADE IN RESPONSE TO COMMENT**

In response to public comment and in order to improve the prevention of surface water runoff, the berm running along the perimeter of the permit boundary has been extended to include the perimeter of the detention pond.

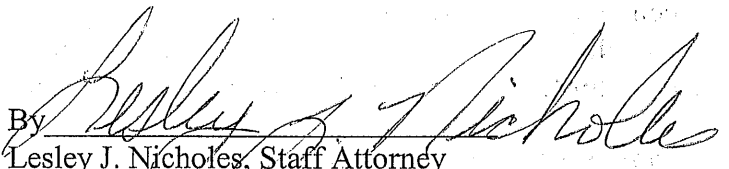
Respectfully Submitted,

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<sup>12</sup>30 TAC § 332.47(7)(E)(2004).

Stephanie Burgeron Perdue, Director  
Environmental Law Division

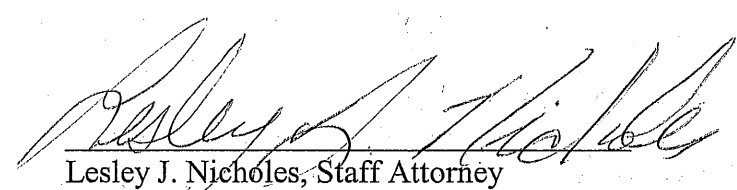
By

  
Lesley J. Nicholes, Staff Attorney  
Environmental Law Division  
State Bar No. 24046530

Representing the Executive Director of the Texas  
Commission on Environmental Quality

**CERTIFICATION OF SERVICE**

I certify that on July 19, 2005, the "Executive Director's Response to Public Comment" for Permit No. MSW-2320 was filed with the Texas Commission of Environmental Quality's Office of the Chief Clerk.

  
Lesley J. Nicholes, Staff Attorney  
Environmental Law Division  
State Bar No. 24046530